

TRULINCS 78867054 - OKPAPAEKE, CHUKWUEMEKA - Unit: BRO-J-B

FROM: 78867054
TO:
SUBJECT: Title Page
DATE: 06/17/2021 09:40:43 AM

Docket in case # 17 CV/CR 225
As: Defendant's Memorandum in further support of motion to withdraw guilty
plea.
Date: 06/29/2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

UNITED STATES OF AMERICA

V.

CHUKWUEMEKA OKPARAEKE

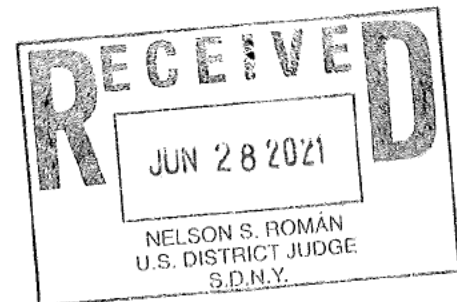
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S4 17 Cr. 225 (NSR)

OKPARAEKE'S MEMORANDUM OF LAW IN RESPONSE TO THE GOVERNMENT'S OPPOSITION (ECF # 186)

Chukwuemeka Okparaek 78867054
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TRULINCS 78867054 - OKPAPAEKE, CHUKWUEMEKA - Unit: BRO-J-B

FROM: 78867054

TO:

SUBJECT: Response to ECF # 186

DATE: 06/17/2021 06:54:11 PM

PRELIMINARY STATEMENT

Okparaeke respectfully submits this memorandum of law in response to Government's opposition (Dkt. No. 186).

ARGUMENT

I. Applicable Law

Title 5, Section 553 requires "General notice of proposed rule making shall be published in the Federal Register..." before any rule shall be promulgated.

Title 5, Section 706 states, "The reviewing court shall -

- (2) hold unlawful and set aside agency action, findings, and conclusions found to be ----
- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,...
 - (B) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;
 - (d) without observance of procedure required by law

II. The Government failed, completely, to address two of three reasons why Okparaeke is legally innocent of Count 1.

In the Government's opposition, the Government's failed to address Okparaeke's argument that the DEA failed to follow the Administrative Procedure Act, specifically Title 5, Section 553(b) requirement that an agency must announce its proposed rule and allow for public comment. It is clear from any review of case law that failing to follow the explicit procedures of the APA is cause for the dismissal of a rule or regulation. The Government also failed to respond to Okparaeke's claim that the DEA's regulation of chemicals besides what was specifically identified by the UN Commission was arbitrary, capricious and an abuse of discretion. In April 2016 the DEA issued a final order placing "Ah-7921" in the Schedule I of the list of Controlled Substances. This order was inclusive of its "isomers, esters, ethers, and salts of isomers, esters, ethers"; it is clear that the UN Commission failed to mention these substances on its scheduling order.

The Government, via its silence on these two points, has conceded these two points; without even addressing whether the Government's claim that the chemical identified by the UN was the same as the one the DEA ultimately scheduled, Okparaeke's claim that the regulation making AH-7921 a Controlled Substance is clearly invalid.

III. The Government's dishonest nitpicking of the scientific record does not save the Regulation

The chemist who created diagrams showing the difference between the chemicals for Okparaeke is Dr. Gregory B. Dudley, Ph. D. Dr. Dudley is the Eberly Family Distinguished Professor and Department Chair of the C. Eugene Bennet Department of Chemistry at West Virginia University in Morgantown, WV. Dr. Dudley also provided Okparaeke with various research reports about "AH-7921" which showed that there are two different chemical names and at least three different chemical structures for the compound.

For example, one group of scientists says the compound 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl] benzamide (AH-7921 as it was intended by the UN Commission) has a chemical structure that is different than the compound identified in the Government's opposition. (See Exh. A Katselou 2015 and compare to Government Exhibit C, Ecf # 186-3) This same type of divergence in professional scientific opinion can also be seen in the Government's own brief. As an exhibit, the Government attached a document coauthored by multiple scientists from the European Monitoring Centre for Drugs and Drug Addiction showing a diagram of "AH-7921" (this time written as 3,4-Dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide) which is different in chemical structure than the document prepared by the Government's expert. (See Government Exhibit G, ECF 186-7, page 3).

It was incumbent upon the DEA, pursuant to the powers vested in it pursuant to Title 21, Section 811(d)(1), to schedule one substance and only one substance. Instead the DEA scheduled multiple substances without and authority and sowed confusion in the process.

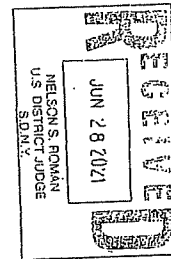
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Therefore, the Court should grant Okparaeeke's motion and dismiss the underlying the charge from the indictment.

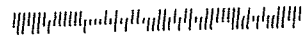
Regards,

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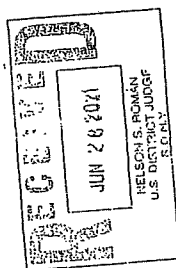


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